

Docket No.: 47777-0008



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Confirmation No. 6708

Customer No.: 53437

Applicant: Christian MAYUAD

Serial No.: 09/941,841

Examiner: Vivek D. Koppikar

Filing Date: August 30, 2001

Group Art Unit: 3626

Title: COMPUTERIZED PRESCRIPTION SYSTEM FOR GATHERING AND
PRESENTING INFORMATION RELATING TO PHARMACEUTICALS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**DECLARATION OF ASSIGNEE IN SUPPORT OF SUBMISSION OF
37 C.F.R. § 1.131 DECLARATION FOR A NON-COOPERATIVE INVENTOR**

Sir:

I, Matthew O. Brady, declare and state as follows:

1. I am intellectual property counsel for Watson Pharmaceuticals, Inc. I am a Registered Patent Attorney, Registration No. 44,554. On or about November 6, 2006, Watson Pharmaceuticals Inc. acquired Andrx Corporation and all related assets as a wholly owned subsidiary. Andrx Corporation is the parent corporation of and owner of Cybear, LLC. Cybear, LLC is the Assignee of record of the above captioned patent application (the '841 Application). Through the aforementioned acquisition, Watson Pharmaceuticals Inc. became the owner and Assignee of the subject application.

2. I am familiar with the prosecution of the '841 Application. I have been informed that previous patent counsel for Andrx met with and communicated with the named inventor Christian Mayaud, regarding his submission of facts and

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documents supporting his conception and diligence for the copending US Patent Application Serial No. 09/941,681 ('681 Application). The '681 application and the subject application are each continuation applications claiming benefit to the same priority date US Patent Application Serial No. 08/330,745, filed Oct. 28, 1994.

3. On January 22, 2004, a 37 C.F.R. § 1.131 declaration executed by the inventor, Christian Mayaud, was filed in the '681 application (mail room date January 22, 2004) for the purpose of swearing behind Schrier, et al., U.S. Patent No. 5,833,599. The facts presented in the attached Declaration were presented in co-pending U.S. Patent Application Serial No. 09/941,681. On June 7, 2004, a second 37 C.F.R. § 1.131 declaration executed by said inventor was filed in the '681 application (mailroom date June 7, 2004) for the purpose of swearing behind the said reference.

4. On July 15, 2004, in an interview in the United States Patent and Trademark Office, the Examiner agreed and noted in an Interview Summary, that "conception prior to the critical reference date under 37 C.F.R. § 1.131 was established."

5. I have been informed by our outside patent counsel that the documents filed in support of the above two 37 C.F.R. § 1.131 declarations, which were attached thereto, were obtained from the inventor Christian Mayaud.

6. Included within these documents was a copy of a page of Christian Mayaud's personal calendar dated January 12, 1993 and marked Exhibit B. In the second 37 C.F.R. § 1.131 declaration (dated June 4, 2004), at page 3, Christian Mayaud stated:

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In further support of the date of this said meeting, attached hereto as Exhibit B, document no. POL 05667, is a copy of two pages from my personal calendar. In my writing there is displayed on the left side a morning entry, showing my "9:30" meeting (third party name and meeting location redacted) which date, printed on my calendar (redacted), is prior to December 13, 1993. This corroborates the date on the handout and the date the meeting took place prior to December 13, 1993. Other writings on this Exhibit B sheet reflect my notes of the parties in attendance at the meeting.

7. For the purposes of showing diligence in this matter, it is my understanding that previous in-house patent counsel requested Christian Mayaud, and he agreed, to provide and did provide copies of his personal calendar, that were still in his possession, including the period of time of at least prior to December 13, 1993 to October 28, 1994. These documents included the above referenced page dated January 12, 1993 from his personal calendar. As Christian Mayaud declared in his June 7, 2004, 37 C.F.R. § 1.131 declaration, the January 12, 1993 personal calendar page was in his handwriting and made by him at or about the time indicated on the date of each page. It is my belief that these personal calendar documents contain facts from the inventor relating to his diligence in prosecuting his above captioned patent application that are true and accurate.

8. It is further my understanding that outside patent counsel prosecuting the above matter for Andrx Corporation reviewed every entry from said personal calendar with the inventor, Christian Mayaud, which relevant parts were recorded

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in a "proposed" 37 C.F.R. § 1.131 declaration, which said counsel reviewed with Christian Mayaud.

9. On October 14, 2004, in an interview in the United States Patent and Trademark Office, the Examiner agreed to review a "proposed" third 37 C.F.R. § 1.131 declaration and noted in an Interview Summary that the evidence submitted in the interview for diligence "does establish sufficient evidence for diligence for the time period of December 13, 1993 to October 28, 1994."

10. The evidence submitted in said October 14, 2004 interview, was the "proposed" 37 C.F.R. § 1.131 declaration with supporting documentation, the relevant copies of pages from Christian Mayaud's personal calendar for the period of time December 13, 1993 to October 28, 1994.

11. On or about January 30, 1995, the named inventor, Christian Mayaud, executed an Assignment of his rights in U.S. Patent Application Serial No. 08/330,745 (the parent application to the '841 Application) to MED-E-SYSTEMS Corporation.

12. On information and belief, Watson Pharmaceuticals Inc. became the owner of the present application through the following series of events (dates were obtained from the USPTO Assignment database for U.S. Patent No. 5,845,255, the parent of the subject application): MED-E-SYSTEMS changed its name to Advanced Health Technologies Corporation (AHT), the name change was recorded on April 23, 1998; AHT conveyed rights to the subject application on December 29, 2000 to Cybear Inc.; Cybear Inc. converted its corporate entity from a corporation to an LLC., this conversion was recorded on June 27, 2002; Cybear LLC is a wholly owned subsidiary of Andrx Corporation; and Andrx

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Corporation was acquired by Watson Pharmaceuticals Inc. on or about November 6, 2006.

13. In the January 30, 1995 Assignment agreement, the inventor, Christian Mayaud, agreed to "execute any and all lawful documents and papers... to any continuation... of the application... in the assignee, its successor or assigns."

14. Previous patent counsel for Andrx Corporation, on behalf of Assignee, Cybear, LLC, made numerous attempts, but were unable to obtain the signature of the inventor, Christian Mayaud, on the 37 C.F.R. § 1.131 declaration, submitted for diligence. Notwithstanding the obligation of the inventor, he is not cooperative and will not sign the 37 C.F.R. § 1.131 declaration for diligence.

15. This declaration is submitted in support of the Assignee, Cybear, LLC to show the inventor's diligence since, as indicated above, the inventor is not cooperative and would not sign the 37 C.F.R. § 1.131 declaration.

16. On Monday, January 10, 2005 previous patent counsel, Ted Whitlock, outside patent attorney Robert M. Schwartz, and Patent Agent David Barman, at that time, an Andrx Corporation employee, held a telephone conference with Examiner Rimmel regarding the '681 application who agreed that in view of the non-cooperation of inventor, Christian Mayaud, the Assignee should submit a written statement explaining the facts that the inventor was uncooperative and would not execute the 131 declaration and that the Assignee should execute the said 131 declaration on behalf of the said inventor.

17. As recently as January 2007, I personally spoke with inventor Christian Mayaud concerning his cooperation regarding

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signing the subject declaration. As of this date, Dr. Mayaud has not cooperated in signing the declaration.

DECLARATION

I, Matthew O. Brady, hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: _____

2/19/07


Matthew O. Brady